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OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: October 27, 2004

Case Number: TSO-0153

This Decision concerns the eligibility of XXXXXXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As set forth below, it is my decision, based on the evidence and testimony presented in this proceeding, that the individual's access authorization should be granted.

I. Background

The individual is employed by a contractor ("the employer") at a Department of Energy (DOE) facility. The employer requested an access authorization for the individual, whose previous access authorization was terminated at the request of the employer as a cost-saving measure. During a background investigation, the local security office ("the LSO") discovered some derogatory information that created a security concern. The LSO asked the individual to participate in a Personnel Security Interview (PSI) in order to resolve the information. The PSI resolved some of the information, but security concerns remained.

In September 2004, the LSO informed the individual how to proceed to resolve the derogatory information that had created a doubt regarding his eligibility for access authorization. Notification Letter (September 14, 2004). The Notification Letter stated that the derogatory information regarding the individual falls within 10 C.F.R. § 710.8 (f), (k), and (l) (Criteria F, K, and L). The LSO invoked Criterion F based on information in its possession that the individual "has deliberately misrepresented, falsified, or omitted significant information from a . . . Questionnaire for Sensitive Positions . . . [or] a personnel security interview" Enclosure 1 of Notification Letter at 2. According to the Notification Letter, the individual did not disclose his use of cocaine in the 1980's during a 1991 PSI and he admitted using drugs while holding a security clearance during a 2003 PSI.

Criterion K refers to information indicating that the individual has "sold, transferred, possessed, used, or experimented with a . . . substance listed in the Schedule of Controlled Substances established pursuant to section 202 of the Controlled Substances Act of 1970 . . . except as prescribed by a physician or otherwise authorized by federal law." 10 C.F.R.

§ 710.8(k). As support for this paragraph, the Notification Letter relies on the individual's admission of drug use in two PSIs, a QNSP, and medical records.

DOE invoked Criterion L based on information indicating that the individual "has engaged in any unusual conduct or is subject to any circumstances which tend to show that [he] is not honest, reliable, or trustworthy; or which furnishes reason to believe that [he] may be subject to pressure, coercion, exploitation or duress which may cause [him] to act contrary to the best interests of the national security." 10 C.F.R. § 710.8 (l). As a basis for this paragraph, the Letter alleges that the individual used drugs while holding a security clearance after signing a statement that he would not do so.

In a letter to DOE Personnel Security, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). The Director of OHA appointed me as the Hearing Officer in this case. After conferring with the individual and the appointed DOE counsel, 10 C.F.R. § 710.24, I set a hearing date. At the hearing, a personnel security specialist testified on behalf of the agency. The individual testified on his own behalf and also elected to call a colleague, his wife, his psychologist and a church counselor as witnesses. The transcript taken at the hearing shall be hereinafter cited as "Tr." Documents that were submitted by the DOE counsel during this proceeding constitute exhibits to the hearing transcript and shall be cited as "Ex." The individual did not submit any exhibits.

II. Analysis

The applicable regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Although it is impossible to predict with absolute certainty an individual's future behavior, as the Hearing Officer I am directed to make a predictive assessment. There is a strong presumption against the granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual's access authorization should be granted

because I conclude that granting the clearance would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this determination are discussed below.

A. Findings of Fact

The individual began drinking alcohol on a regular basis at the age of 15. Ex. 6 (1991 PSI) at 20-21. In July 1985, at the age of 17, he began using marijuana on the weekends. *Id.* at 26-29. The individual was arrested three times between 1986 and 1988 for alcohol and drug-related charges. *Id.* at 8. According to the individual, he stopped using marijuana in 1988 because he was completing a two year degree and knew that he would soon be looking for work. Ex. 7 (2003 PSI) at 16-17.

The individual began working at the DOE site in 1989. 2003 PSI at 52. The employer applied for a security clearance and DOE security interviewed the individual in 1991. 1991 PSI. During the 1991 PSI, the individual admitted using marijuana, but told the personnel security specialist that he had not used any other drug, including cocaine. *Id.* at 27. He also stated his intent to abstain from drug use in the future and signed a drug certification that day. *Id.* at 31; Ex. 10. In 1993, the individual changed jobs and moved to a new location within the DOE site. In 1995, his mother died and he began to smoke marijuana occasionally and to use crack cocaine. 2003 PSI at 16. In January 1999, the individual's clearance was terminated by his employer as a cost-saving measure. Ex. 7 at 3. The individual stopped drinking in January 2000, but continued to use cocaine. 2003 PSI at 4.

Early in 2001, the individual, disturbed by the negative impact of his drug use on his marriage and his health, stopped using drugs and began attending a church addiction recovery program. 2003 PSI at 33. A colleague who had noticed that the individual was behaving erratically at work recommended that he see a local psychiatrist. Tr. at 18-20, 23-27. In February 2001, the individual visited that psychiatrist, and she referred him to a licensed clinical psychologist specializing in drug abuse issues. Ex. 8. At the individual's first appointment with the psychologist in February 2001, the psychologist suggested that he also attend Alcoholics Anonymous (AA) or Narcotics Anonymous (NA). 2003 PSI at 41; Ex. 8. The individual began attending NA and continued his appointments with the psychologist, but stopped seeing the psychologist in July 2001 when his wife became ill. 2003 PSI at 33; Tr. at 104. In early 2002 the individual relapsed and began using cocaine again. Tr. at 105; PSI at 33. The individual then resumed regular appointments with the psychologist. Tr. at 115. 2003 PSI at 39. According to the individual, he stopped using cocaine around that time. Tr. at 105. In February 2003, the psychologist diagnosed the individual as suffering from cocaine and alcohol dependence in early full remission. Ex. 9. The psychologist recommended that the individual continue attending his church-sponsored group counseling and NA. Ex. 8. The individual attended his last NA meeting in March 2003 and had his last appointment with the psychologist in December 2003. 2003 PSI at 39-41; Ex. 8. At the time of the hearing he was still attending the church recovery program weekly. Tr. at 12.

B. DOE Security Concerns

The individual's failure to supply DOE with truthful information regarding his drug use raises valid and significant concerns under Criterion F. A breach of trust causes DOE security to question whether the individual can be trusted to comply with security regulations. *Personnel Security Review*, 28 DOE ¶ 83,015, Case No. VSA-0371 (2000). In addition, an individual could be subject to coercion because of a dishonest act. *Personnel Security Hearing*, 28 DOE ¶ 82,829 at 85,871, Case No. VSO-0466 (2001); *affirmed* (OS, April 3, 2002). Based on the record before me, I find that there is a valid question about the truth of the information that the individual presented in his 1991 PSI and in his QNSP. 10 C.F.R. § 710.8 (f). Thus the security concern regarding the omission is valid, and the agency has properly invoked Criterion F in this case.

The reliance in the Notification Letter upon Criteria K and L stems from the individual's use of illegal drugs. The Criterion L allegations of dishonesty are a result of the individual using drugs after signing a drug certification. Illegal drug use indicates a willingness to ignore the law that could be reflected in the clearance holder's attitude toward security requirements. *See, e.g., Personnel Security Hearing*, 28 DOE ¶ 82,816, Case No. VSO-0448 (2001); *Personnel Security Hearing*, 28 DOE ¶ 82,756, Case No. VSO-0350 (2000). Dishonesty can indicate that the individual may not properly safeguard classified information. The individual's drug use is well documented in the record, and validates the charges under Criteria K and L.

C. Mitigation of Security Concerns

1. Criteria F and L

The Notification Letter contains two allegations of untruthfulness under Criterion F. The first allegation is that the individual did not disclose cocaine use in his 1991 PSI. The second Criterion F allegation is that the individual denied using drugs while holding a security clearance in his 2002 QNSP, but in his 2003 PSI admitted using drugs while his clearance was active. The Criterion L allegations questioning the individual's honesty, reliability and trustworthiness are: (1) that the individual signed a drug certification in 1991 stating that he would not use illegal drugs; (2) that during his 2003 PSI the individual admitted using cocaine in 1984; and (3) that the individual admitted using drugs in violation of the drug certification that he signed in 1991.

a. Failure to Disclose Cocaine Use in the 1991 PSI

In his 1991 PSI, the individual denied using any drug other than marijuana. 1991 PSI at 27. This was false. During his 2003 PSI, the individual stated that he may have tried cocaine in 1984 while in high school. PSI 2003 at 15.¹

¹ DOE also finds corroboration of pre-1991 cocaine use in the following statement from the psychologist's records, dated February 2001: "[The individual] began inhaling cocaine in 1985 and continued 'heavy' social and weekend abuse from 1985-87." Notification Letter; Ex. 8.

At the hearing, the individual testified that the 2003 statement was made many years after the alleged cocaine use, and that he was “trying to be sure that I wasn’t misrepresenting any of my actions when I was younger.” Tr. at 13. According to the individual, he did not remember smoking cocaine prior to 1988, but could not rule it out, either, and thus decided to err on the side of caution. Tr. at 101. However, he emphatically denied using cocaine heavily from 1985-1987, and his wife, who knew him in high school, corroborated his testimony. Tr. at 33. The individual also argues that no background interviews in the 1991 time period mentioned any cocaine usage on his part. Tr. at 13. Further, the psychologist admitted that he may have confused the individual’s cocaine use with his marijuana and drinking, which the individual described to the psychologist as heavy during 1985-1988. Tr. at 61-63.

Although the security concern arising from the individual’s omission of his cocaine use in the 1991 PSI is valid, I nonetheless find that the individual has mitigated this security concern. The concerns under Criteria F and L are based entirely on the individual’s own disclosures to the LSO. After the individual began a treatment program with the psychologist in 2001, he actively and honestly dealt with his drug problem. At the hearing, the psychologist described the individual as consistently diligent, responsible and forthcoming in his recovery program. Tr. at 64. Consequently, in the 2002 QNSP and every contact with the LSO thereafter, he fully disclosed his marijuana and cocaine use.

Ex. 9. I conclude that the individual, after embarking on a self-initiated recovery program ten years after the omission, learned the importance of honesty to a full recovery and then fully disclosed all of his drug use as he remembered it.

As for the particular omission cited in the Notification Letter, several factors weigh in favor of mitigation. First, the omission was an isolated incident that occurred fourteen years prior to the hearing. Second, the individual was very young, in his early twenties, when he participated in the interview. Immaturity and impulsiveness can often lead to lapses in good judgment in young people. Third, it is the individual himself whose honest responses on his 2002 QNSP and 2003 PSI provided the information that led to the institution of these proceedings. Further, there is no other instance or pattern of falsification in his actions and the record contains credible testimony that the individual takes the requirements of security seriously.

b. Use of Drugs While Holding a Security Clearance

In the second allegation, the LSO contends that in his 2003 PSI the individual admitted using drugs while his security clearance was active. 2003 PSI at 50. In mitigation of this charge, the individual argues that he believed that his clearance had been terminated prior to his resumption of drug use after his mother died. According to the individual, he first learned the exact date of the termination of his clearance from the personnel security specialist during his 2003 PSI. 2003 PSI at 51; Tr. at 14. During the interview, the individual told the personnel security specialist that he thought his clearance had been terminated earlier than January 1999. 2003 PSI at 51. In fact, he thought the clearance had been terminated around 1995-1996. Tr. at 103. However, once the interviewer advised the individual of the actual termination date, the individual honestly admitted that he had used drugs while his clearance was still active, albeit unaware that it had not been terminated. 2003 PSI at 51.

I find that the individual has mitigated this allegation. First, from a common sense standpoint, it was not unreasonable for the individual to conclude that his security clearance was terminated prior to 1999 given the evidence in the record that he had held different jobs at the facility, none requiring access to classified matter or nuclear materials. His employer had been downgrading and terminating clearances at the site for years. Tr. at 103. It is within reason that the individual thought his clearance terminated when he transferred to a different job. Further, the individual's honesty in completing his 2002 QNSP belies any intent to violate the security regulations. Question 24 of the QNSP consists of three parts. Part A asks if the individual has used any controlled substance in the last 7 years. The individual answered "yes." Ex. 9 at 2. Part B asks if he has ever illegally used a controlled substance while possessing a security clearance. He answered "no." *Id.* Question C asked if he was ever involved in the illegal purchase or sale of any illegal drug, and the individual answered "yes." He provided further information that from February 1996 to April 2002 he had used marijuana, cocaine and alcohol many times. *Id.* Thus, he was being forthright and did not intend to deceive anyone when he filled out the QNSP. Third, the individual has consistently and credibly maintained that he was not aware of the actual date his clearance was terminated.

To sum up, the key issue in the analysis of the Criterion F charges is whether the individual has presented sufficient evidence to demonstrate that he can now be trusted to be consistently honest and truthful with DOE. After reviewing the evidence in the record and assessing the credibility of the individual's testimony at the hearing, I conclude for the following reasons that he has mitigated the security concern arising from the charges mentioned above. First, there is no evidence of deliberate falsification or omission. See *Personnel Security Hearing*, 28 DOE ¶ 82,829 at 85,872 (2001) Case No. VSO-0466; *aff'd* (OS April 3, 2002) (describing factors to consider in mitigation of falsification). The individual credibly explained his response to questions about his pre-1991 cocaine use in the 2003 PSI. Second, the individual voluntarily admitted the full extent of his drug use on his 2002 QNSP and during his 2003 PSI. It is not logical that an individual would honestly admit the recent use, purchase, and sale of illegal drugs in an important document and then lie in the same document about using drugs while holding a clearance. Third, the individual has told his family and some church members and colleagues about his drug use, minimizing if not negating his susceptibility to blackmail, coercion and exploitation. Tr. at 35. Fourth, at the time of the hearing, it was approximately two years since the falsification in his QNSP response was corrected. That amount of time is sufficient evidence of reformation from falsification, given the individual's age at the time of the falsification, the counseling he has received, and the fact that the individual was very forthcoming in describing his drug use in all subsequent inquiries from DOE security. As Hearing Officer, I have weighed the relevant factors and circumstances connected with the individual's conduct, and I conclude that the individual has mitigated the Criterion F and Criterion L security concerns.

2. Criterion K – Drug Use

The individual argues that he has mitigated the security concerns under Criterion K and is now rehabilitated from the psychologist's diagnosis of alcohol and cocaine dependence. To support this argument, he presented the testimony of the psychologist who treated the individual from 2001 to 2003. Tr. at 60, 68. They met weekly, then every two weeks, and then monthly as the individual began to recover. Tr. at 71. At this time the individual was

already attending a church recovery program and the psychologist prescribed a treatment program of weekly psychotherapy, weekly attendance at the church recovery group, and six AA or NA meetings per week. Ex. 8. According to the psychologist, the individual did not require clinical treatment, the treatment program was successful, and the individual is now in sustained full remission. *Id.* at 79-80. The individual's wife of 15 years corroborated her husband's claim that he is drug and alcohol free and regularly maintains his recovery program. Tr. at 34-35. She described her growing awareness that her husband was suffering from drug abuse, and how he has recovered as a result of psychotherapy, NA, and weekly attendance at the church recovery group. Tr. at 38-41, 49-56. A colleague testified that he had asked the individual to seek counseling in 2001 when he observed changes in the individual's behavior. Tr. at 18, 26. He stated that since the individual went to counseling, he has been "an exemplary worker." Tr. at 19, 27. The leader of the church recovery program described the program as very similar to NA or AA, but Bible-based. Tr. at 89. He described the individual as "very honest" about his addiction and active in his own recovery and helping others in the group. Tr. at 90-91. The individual often fills in for the group leader and is considered very reliable. Tr. at 91.

In a Part 710 proceeding, the Hearing Officer gives great deference to the expert opinions of mental health professionals regarding rehabilitation or reformation. See *Personnel Security Hearing*, 28 DOE ¶ 82,827, Case No. VSO-0476 (2001). In this case, the individual's psychologist was the only mental health professional to testify at the hearing. The psychologist persuasively testified that the individual has presented adequate evidence of rehabilitation from the original diagnosis of alcohol and cocaine dependence. The witnesses for the individual have confirmed that he is drug and alcohol free and continues to participate in a recovery program, as the psychologist recommended in his treatment program. The individual convinced me that he does not intend to abuse drugs in the future, and has presented a favorable prognosis from a credentialed medical professional. Thus, I find that the individual has mitigated the security concerns of Criterion K.

III. Conclusion

As explained in this Decision, I find that the DOE Operations Office properly invoked 10 C.F.R. § 710.8 (f), (k), and (l). The individual has presented adequate mitigating factors that alleviate the legitimate security concerns of the DOE Operations Office. In view of these criteria and the record before me, I find that granting the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual should be granted access authorization. Any party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Valerie Vance Adeyeye
Hearing Officer
Office of Hearings and Appeals

Date: October 7, 2005